

**TESTIMONY OF ANTHONY BARBER,
DIRECTOR, OREGON OPERATIONS OFFICE, AND
ALAN HENNING, FOREST TEAM, WATERSHED UNIT,
ENVIRONMENTAL PROTECTION AGENCY, REGION 10**

BEFORE THE OREGON BOARD OF FORESTRY, APRIL 22, 2015

Good morning, Chair XX and Commission and Board Members. *[Tony]* My name is Anthony Barber. I'm the Director of the US Environmental Protection Agency's Oregon Operations Office and the executive lead for the EPA Region 10 Forest Team. *[Alan]* My name is Alan Henning. I'm one of the Forest Team representatives for the Watershed Unit for the EPA's Region 10 Office in Eugene. *[Tony]* Thank you for the opportunity to share our thoughts with the Commission and Board Members.

Today, I'm going to talk about EPA's role as it relates to water quality and fish in Oregon, our support for the Riparian Rule and why it's important, what we believe the rule should address, and how this relates to the approvability of the Oregon's Coastal Nonpoint Program.

EPA's Role. EPA implements the Clean Water Act in partnership with states and tribes. This includes acting on the state's water quality standards, 303(d) Integrated Report, total maximum daily loads (TMDLs), the state's nonpoint source control programs and overseeing NPDES permits issued by the state. We work closely with the Oregon Department of Environmental Quality (DEQ) and other state agencies on these efforts. EPA is also responsible for overall implementation of the Safe Drinking Water Act in partnership with the Oregon Health Authority and DEQ.

EPA gives technical and financial support to states and tribes to help them implement programs that protect and restore surface and drinking water. Where states and tribes fail to carry out Clean Water Act responsibilities, or when directed by the Courts, EPA is required to take the actions needed to meet national water quality goals.

Why the Riparian Rule is Important. There are 12 million acres of non-federal forest land in Oregon. The management of these lands affects drinking water sources, water quality, and aquatic habitat for several species of threatened and endangered fish, including salmon, steelhead and trout. . Because forest practices have direct and important effects on water quality and fish habitat, the riparian rule

analysis has significant implications for EPA's work to protect human health and the environment, and we have closely tracked and reviewed this rule development process.

EPA recognizes that Oregon was one of the first states in the country to develop forest practice rules and regulations. We also recognize and appreciate the state's efforts to review rule effectiveness over time. The current riparian rule analysis is the culmination of a process that started in the late 1990s and includes the 1997 Oregon Coastal Salmon Restoration Initiative¹, Oregon's 1999 IMST report², the 2002 Sufficiency Analysis³, and the recent Ripstream studies⁴. Collectively, these efforts have found that existing forestry practices do not consistently meet water quality standards or fully provide for riparian functions important to water quality and fish. With stream temperature directly affecting fish health and behavior, a revised riparian rule with larger buffers on small and medium fish-bearing streams will ensure stream temperature provide the cold stream temperatures critical to fish health. The revised riparian rules will also improve drinking water and surface water quality by reducing runoff from other pollutants such as fine sediment, toxics, and nutrients.

What the Rule Should Address. Because of the direct effects forestry has on Oregon waters, the scope of the proposed rule will be important. EPA supports a Rule that includes all small and medium fish-bearing streams to protect existing cold water and restore cold water in streams that currently exceed temperature standards. EPA also believes greater protections for non-fish bearing streams, are warranted especially when non-fish bearing streams contribute pollutant loading to fish bearing streams.

XX river miles of Oregon streams have been or are currently impaired for temperature and other pollutants, which impacts fish and other organisms that rely on cold water to live and grow. EPA strongly supports a Riparian Rule that includes to all small and medium fish-bearing streams, regardless of their status under section 303 of the Clean Water Act. A Riparian Rule with a scope limited to streams that are listed as unimpaired, or to streams without a TMDL in place would exclude a large universe of streams with high temperatures that need to be restored. It would be counterproductive to implement

¹ http://www.oregon.gov/OPSW/docs/ocsri_mar1997ex.pdf

² Independent Multidisciplinary Science Team. 1999. Recovery of Wild Salmonids in Western Oregon Forests: Oregon Forest Practices Act Rules and the Measures in the Oregon Plan for Salmon and Watersheds. Technical Report 1999-1 to the Oregon Plan for Salmon and Watersheds, Governor's Natural Resources Office, Salem, Oregon.
<http://www.fsl.orst.edu/imst/reports/1999-1.pdf>

³ The Oregon Department of Forestry and Department of Environmental Quality. 2002. Sufficiency Analysis: A Statewide Evaluation of FPA Effectiveness in Protecting Water Quality. Available at:
http://www.odf.state.or.us/DIVISIONS/protection/forest_practices

⁴ Groom, J.D., L. Dent, and L.J. Madsen. 2011. Response of western Oregon stream temperatures to contemporary forest management. *Forest Ecology and Management*, doi:10.1016/j.foreco.2011.07.012

existing forest practices on streams with temperature impairments when it has been demonstrated that those practices are not adequately protective of cold water.

A riparian rule with an appropriate buffer width applied on all small and medium fish-bearing streams will be critical to successful protection and restoration efforts for listed fish in Oregon. EPA's 2003 Temperature Guidance⁵, which was developed through an interdisciplinary team of water quality specialists, fish biologists, hydrologists, and other scientists from multiple agencies and organizations in the Northwest, concluded that the most important factors for restoring salmon runs are providing cold water in streams and a return to a natural thermal regime.

Type "N" Streams. There are over 73,000 miles of fish and non-fish bearing streams in Western Oregon of which, only 8,351 miles or approximately 11% are Salmon, Steelhead and Bull Trout streams (SSBT). While EPA supports riparian rule revisions that will provide greater buffer protections for all small and medium fish bearing streams, EPA also believes greater protections must be provided for non-fish bearing streams (Type N streams), especially perennial "N" streams. Type N streams are often head water streams that provide critical cold water and large wood for meeting water quality standards, supporting beneficial uses and enhancing downstream fish habitat. Where Type N streams are not protected by adequate buffers and are impacted by increased temperature loading, that pollutant load can be delivered to the downstream type F streams, e.g., SSBT streams.

Streams in Eastern Oregon. EPA recognizes that the focus of the State's riparian rule analysis has been on streams in Western Oregon and appreciates the level of ODF's effort in its work. However, 303(d) temperature listings exist throughout the Oregon and where these listings occur, greater riparian protections may be needed as well. (Dan, Christine and Tony, this is essentially a place-holder statement to ensure that our testimony does not get interpreted as only needing to add greater protections to western Oregon streams)

How Does This Relate to the Coastal Nonpoint Program/CZARA? The Riparian Rule also overlaps with EPA and NOAA's recent disapproval action in January 2015 of Oregon's coastal nonpoint program. While EPA and NOAA acknowledged significant progress in Oregon's nonpoint coastal program, we also identified gaps in Oregon's forestry program as a basis for the disapproval. One of these was the inadequacy of current forest riparian buffers on small and medium fish bearing and non-fish bearing

⁵ U.S. Environmental Protection Agency. 2003. *EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards*. EPA 910-B-03-002. Region 10 Office of Water, Seattle, WA. Available at: http://www.epa.gov/region10/pdf/water/final_temperature_guidance_2003.pdf

streams. While the current riparian rule revisions is not considering greater protections for non-fish bearing streams, EPA believes that a Riparian Rule with an appropriate buffer width applied to all small and medium fish bearing streams would be significant progress toward moving the State's program to approvability. Although other areas in forestry would need to be addressed for full approval of Oregon's forestry measures, the rule would fill a significant gap identified in EPA and NOAA's evaluation of Oregon's forestry program in our agencies' disapproval action. If the Board of Forestry would like to hear more information on our CZARA findings on forestry at another meeting, we would be very happy to have a dialogue with more detail on the other areas that EPA and NOAA identified.

Closing Words. Riparian management areas on small and medium fish bearing streams and nonfish streams that are important cold water sources for fish bearing streams provide protection and restoration of riparian functions important for fish and water quality. We applaud the Board of Forestry for considering amending the Forest Practices Act regulations to provide greater protections on Oregon streams and urge you to move forward on adoption of such rules.

I want to thank you again for the opportunity to provide this testimony and would be happy to answer questions you may have at this time. Alan Henning, our Forest Team representative, and I are both available to discuss these issues further with you.

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Today, I'm going to talk about EPA's role as it relates to ~~in~~ water quality and fish in Oregon, our support for the Riparian Rule and why it's important, what we believe the rule should address, and how this relates to the approvability of the Oregon's Coastal Nonpoint Program.

EPA's Role. EPA implements the Clean Water Act in partnership with states and tribes. This includes acting on the state's water quality standards, 303(d) Integrated Report, total maximum daily loads (TMDLs), the state's nonpoint source control programs and coastal zone management programs, ~~and~~ overseeing NPDES permits issued by the state. We work closely with the Oregon Department of Environmental Quality (DEQ) and other state agencies on these efforts. EPA is also responsible for overall implementation of the Safe Drinking Water Act in partnership with the Oregon Health Authority ~~Department for Human Services~~ and DEQ.

EPA gives technical and financial support to states and tribes to help them implement programs that protect and restore surface and drinking water. Where states and tribes fail to carry out Clean Water Act responsibilities, or when directed by the Courts, EPA is required to take the actions needed to meet national water quality goals.

Why the Riparian Rule is Important. ~~EPA recognizes that Oregon is one of the first states in the country to develop forest practice rules and regulations. There are 12 million acres of non-federal forest~~

Comment [KT1]: Not sure if it is more appropriate to say Oregon Healthy Authority or Oregon Drinking Water Services (which is under OHA), but DHS is Oregon's social services agency

land in Oregon. The management of these lands ~~These affects~~ drinking water sources, water quality, and aquatic habitat for several species of threatened and endangered fish, including salmon, steelhead and trout, on 12 million acres of non-federal forest land in Oregon. Because forest practices have direct and important effects on water quality and fish habitat, the riparian rule analysis has significant implications ~~to for~~ EPA's work to protect human health and the environment, and we have closely tracked and reviewed ~~this rule development process, proposed amendments to forest practice rules and regulations for riparian buffers on Oregon streams.~~ EPA recognizes that Oregon is one of the first states in the country to develop forest practice rules and regulations.

EPA recognizes that Oregon was one of the first states in the country to develop forest practice rules and regulations. We also recognize and appreciate the state's efforts to review rule effectiveness over time. The current riparian rule analysis is the culmination of a process that started in the late 1990s and with includes the 1997 Oregon Coastal Salmon Restoration Initiative¹, Oregon's 1999 IMST report², and the 2002 Sufficiency Analysis³, and the in the 1990s and the recent Ripstream sStudies⁴ in the early 2000's. Collectively, th~~These efforts have found studies indicate~~ that existing forestry practices do not consistently meet water quality standards or fully provide for riparian functions important to water quality and fish. With stream temperature directly affecting fish health and behavior, a revised riparian rule with larger ~~there is a need for larger~~ buffers on smaller and medium fish-bearing streams will ensure stream temperature provide the cold stream temperatures critical to fish health. The revised ~~New riparian rules for medium and small fish-bearing streams will also improve drinking water and surface water quality by reducing runoff from other pollutants such as fine sediment, toxics, and nutrients.~~

What the Rule Should Address. Because of the direct and important effects forestry has on Oregon waters, the scope of the proposed rule will be important. ~~EPA considers it important not only to consider the riparian management areas, but where the riparian rule applies.~~ EPA supports a Rule that includes ~~applies to all small and medium fish-bearing streams~~ to protect existing cold water and restore cold

¹ http://www.oregon.gov/OPSW/docs/ocsri_mar1997ex.pdf

² Independent Multidisciplinary Science Team. 1999. Recovery of Wild Salmonids in Western Oregon Forests: Oregon Forest Practices Act Rules and the Measures in the Oregon Plan for Salmon and Watersheds. Technical Report 1999-1 to the Oregon Plan for Salmon and Watersheds, Governor's Natural Resources Office, Salem, Oregon. <http://www.fsl.orst.edu/imst/reports/1999-1.pdf>

³ The Oregon Department of Forestry and Department of Environmental Quality. 2002. Sufficiency Analysis: A Statewide Evaluation of FPA Effectiveness in Protecting Water Quality. Available at: http://www.odf.state.or.us/DIVISIONS/protection/forest_practices

⁴ Groom, J.D., L. Dent, and L.J. Madsen. 2011. Response of western Oregon stream temperatures to contemporary forest management. Forest Ecology and Management, doi:10.1016/j.foreco.2011.07.012

Comment [KT2]: West of the cascade range? Or are we suggesting that the current rulemaking should apply statewide?

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water in streams that currently exceed temperature standards with high, current temperatures. EPA also believes greater protections for non-fish bearing streams, are warranted especially when non-fish bearing streams contribute pollutant loading to fish bearing streams.

XX river miles of Oregon streams have been or are currently impaired for temperature and other pollutants, which impacts fish and other organisms that rely on cold water to live and grow. EPA strongly supports a Riparian Rule that ~~includes~~ applies to all small and medium fish-bearing streams, whether they are impaired or not impaired regardless of their status under section 303 of the Clean Water Act. A Riparian Rule with ~~whose scope is limited to streams that are listed as unimpaired, or to streams without a TMDL in place with cold temperatures would exclude a large universe of streams with high temperatures that need to be restored. It would be counterproductive to implement existing forest practices on streams with temperature impairments when it has been demonstrated that those practices are not adequately protective of cold water.~~

Comment [KT3]: Same comment as above

A riparian rule with an appropriate buffer width applied on all small and medium fish-bearing streams will be critical to successful protection and restoration efforts for listed fish in Oregon. EPA's 2002-2003 Temperature Guidance⁵, Project, which was developed through an interdisciplinary team of water quality specialists, fish biologists, hydrologists, and other scientists from multiple agencies and organizations in the Northwest, concluded that the most important factors for restoring salmon runs are providing cold water in streams and a return to a natural thermal regime.

Comment [KT4]: This may be beyond where we need to go in our testimony. My thought in adding this was to put a finer point on this issue.

Type "N" Streams. There are over 73,000 miles of fish and non-fish bearing streams in Western Oregon of which, only 8,351 miles or approximately 11% are Salmon, Steelhead and Bull Trout streams (SSBT). While EPA supports riparian rule revisions that will provide greater buffer protections for all small and medium fish bearing streams, EPA also believes greater protections must be provided for non-fish bearing streams (Type N streams), especially perennial "N" streams. Type N streams are often head water streams that provide critical cold water and large wood for meeting water quality standards, supporting beneficial uses and enhancing downstream fish habitat. Where Type N streams are not protected by adequate buffers and are impacted by increased temperature loading, that pollutant load can be delivered to the downstream type F streams, e.g., SSBT streams.

⁵ U.S. Environmental Protection Agency. 2003. *EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards*. EPA 910-B-03-002. Region 10 Office of Water, Seattle, WA. Available at: http://www.epa.gov/region10/pdf/water/final_temperature_guidance_2003.pdf

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How Does This Relate to the Coastal Nonpoint Program/CZARA? The Riparian Rule also overlaps with EPA and NOAA's recent disapproval action in January 2015 of Oregon's coastal nonpoint program. While EPA and NOAA acknowledged significant progress in Oregon's nonpoint coastal program, ~~we~~they also identified gaps in Oregon's forestry program as a basis for the disapproval. One of these was the inadequacy of current forest riparian buffers on small and medium fish bearing and non-fish bearing streams. While the current riparian rule revisions is not considering greater protections for non-fish bearing streams, EPA believes that a Riparian Rule with an appropriate buffer width applied to all small and medium fish bearing streams would be significant progress toward moving the State's program toward approvability. Although other areas in forestry would need to be addressed for full approval of Oregon's forestry measures, the rule would fill a significant gap identified in EPA and NOAA's evaluation of Oregon's forestry program in our agencies' disapproval action. If the Board of Forestry would like to hear more information on our CZARA findings on forestry at another meeting, we would be very happy to have a dialogue with more detail on the other areas that EPA and NOAA identified.

Comment [KT5]: Same comment as above

Closing Words. Riparian management areas on small and medium fish bearing streams and nonfish streams that are important cold water sources for fish bearing streams ~~are important to provide~~ protection and restoration of riparian functions important for fish and water quality. We applaud the Board of Forestry ~~for~~on considering amending the the amendment of Forest Practices Act regulations to that will provide greater protections on Oregon small and medium fish bearing streams and urge you to move forward on adoption of such rules.

I want to thank you again for the opportunity to provide this testimony and would be happy to answer questions you may have at this time. Alan Henning, our Forest Team representative, and I are both available to discuss these issues further with you.

